IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12390 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHRATH KHAGABHAI RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12390 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of filing this Special Civil Application, the petitioner has challenged the order passed by the

District Magistrate, Banaskantha at Palanpur, on 2nd May, 2003, directing detention of the petitioner as "bootlegger" in exercise of powers conferred upon him by sec.3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short). In pursuance of the said order, the petitioner came to be detained from 2nd May, 2003.

2. The grounds placed on record and served upon the petitioner discloses that the detaining authority has taken into consideration an offence registered against the petitioner on 8th March, 2003, under Sec.66(b), 65(a)(e), 81, 83, 116(2) of the Bombay Prohibition Act whereby the petitioner was found in possession of foreign liquor i.e. 384 bottles of value of Rs.1,01,050/-. It was alleged that the petitioner was indulging in selling and transporting foreign liquor and due to distribution of selling and transporting of foreign liquor the public health was adversely affected. The detaining authority also came to the conclusion that therefore it was necessary to prevent the petitioner from acting prejudicial to the maintenance of public order by preventing activities of selling illegal foreign liquor. From the above fact, the order impugned came to be passed.

3. Learned advocate Mr.H.R.Prajapati for the petitioner and learned AGP Ms.Panchal for the respondents were heard at length.

4. Out of various contentions raised and controverted by the learned AGP, the matter can be disposed of solely on the ground that what was the material before the detaining authority to pass the impugned order. On going through the grounds has placed on record, it is clear that the detaining authority took into consideration a registration of crime against the petitioner on 8th March, 2003, an order came to be passed on 2nd May, 2003. Thus, it is apparent on record that to come to a subjective satisfaction the detaining authority took into consideration solitary incident of registration of crime against the petitioner which is also a stale case. The grounds reveals that there was no material except the papers of the crime registered against the petitioner to reasonably reached to the subjective satisfaction that the activities of the petitioner was immediately required to be prevented. The order impugned, therefore, is required to be quashed on this ground alone.

5. In the result, this special civil application is

allowed. The order passed by the District Magistrate, Banaskantha at Palanpur, on 2nd May, 2003, directing the detention of petitioner in exercise of powers conferred upon him under sec.3(1) of the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute with no order as to costs.

(J.R. Vora, J.)

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